

Exhibit 39

In the Matter Of:

UNITED STATES vs

UNITED STATES SUGAR CORPORATION

ROBERT SPROULL

February 24, 2022



1
2 UNITED STATES DISTRICT COURT
3 FOR THE DISTRICT OF DELAWARE
4 Civil Action No. 21-cv-1644 (MN)

5 -----
6 UNITED STATES OF AMERICA,

7 Plaintiff,

8 vs.

9 UNITED STATES SUGAR

10 CORPORATION, et al.,

11 Defendants.
12 -----

13
14 ** CONFIDENTIAL **
15

16 REMOTE VIDEOTAPED DEPOSITION OF

17 ROBERT SPROULL
18

19 Thursday, February 24, 2022

20 10:30 a.m. (EST)
21

22
23 Reported by:

24 Joan Ferrara, RMR, FCRR

25 Job No. 2022-830473

1 R. SPROULL - CONFIDENTIAL

2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED].

7 Q. So when you're responding to an
8 RFP, how do you decide what initial price
9 to bid for the contract?

10 A. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

R. SPROULL - CONFIDENTIAL

[REDACTED]

Q. How does ASR determine the transportation costs that factor into the

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2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 Q. Do you consider the
9 transportation costs when deciding whether
10 to submit a bid in response to an RFP?

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 A. [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

160

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[REDACTED]

Q. When you're determining a bid,
how significant is the transportation cost
as opposed to the FOB type of cost?

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

163

1 R. SPROULL - CONFIDENTIAL

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 Q. How do you obtain information
17 about what competitors might be bidding?

18 A. Sorry, can you restate the
19 question?

20 Q. Yeah.
21 How do you obtain information
22 about what your competitors might be
23 bidding?

24 A. Well, the number one, by far, is
25 we talk to our customers. When we talk to

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2 changed, meaning that the customer
3 indicates a different volume or a different
4 product set or a different timing, then we
5 always reserve the right to adjust our
6 offer. And at times customers indicate
7 that our price is too high. And so we have
8 an opportunity if we choose to, to make a
9 lower offer.

10 Q. If a customer indicates that your
11 price is too high, what information do you
12 use to submit a revised bid?

13 MR. YATES: Object to form.

14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

168

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2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 Q. When you say the customer's
7 comments, does that refer to customers
8 telling you what other bids they may have
9 received?

10 A. It could. Not necessarily
11 specifically that, but it could.

12 Q. So we talked earlier about the
13 competitors that you see for ASR and you
14 listed some of them.

15 I think you mentioned that you
16 had in the past lost sales to Cargill.

17 Do you recall that?

18 A. Yes.

19 Q. What sales did ASR lose to
20 Cargill?

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

188

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2 [REDACTED]

3 [REDACTED]

4 [REDACTED].

5 Q. Have there been any instances
6 where you've lost business to a distributor
7 where that distributor was reselling sugar
8 that it had purchased from ASR?

9 MR. YATES: Object to form.

10 A. I can't -- I can't recall. I'm
11 not sure if it has or hasn't happened.
12 That's not something that -- that's sort of
13 strange. Yeah, I don't know.

14 Q. Looking back at the document,
15 Exhibit 12, the bottom level e-mail is from
16 Mr. Henderson to you and Mr. O'Malley,
17 correct?

18 A. Correct.

19 Q. And the second-to-last paragraph
20 of the e-mail, Mr. Henderson says, [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

190

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[REDACTED]

191

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2 [REDACTED]

3 [REDACTED]

4 Q. [REDACTED]

5 [REDACTED]

6 [REDACTED]?

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 Sorry, was there a question?

11 What's the question?

12 Q. Currently not a question pending.

13 You answered it. Thank you.

14 A. Oh, I'm sorry. Okay. All right.

15 Q. So put that one aside, please.

16 I'm going to ask William to send
17 you a document that we had as Document E,
18 which I'd like to mark as Exhibit 13 to the
19 deposition. This is a document that was
20 produced in discovery with Bates No.
21 FCC-00016907 through Bates number ending in
22 908.

23 (Sproull Exhibit 13, 1/8/20
24 e-mail, Bates FCC-00016907 to
25 FCC-00016908, remotely introduced and

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2 provided electronically to the
3 reporter.)

4 Q. If you could please download that
5 one and then take a look at it and let me
6 know when you've had a chance to review it.

7 A. Okay.

8 Q. Is this an e-mail that you sent
9 to Alan Henderson on January 8, 2020?

10 A. Yes.

11 Q. Did you send this e-mail in the
12 ordinary course of your work at ASR?

13 A. Yes.

14 [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

193

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Q.

194

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[REDACTED]

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[REDACTED]

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[REDACTED]

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195

R. SPROULL - CONFIDENTIAL

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

197

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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2 [REDACTED]
3 [REDACTED]
4 Q. All right. You can put that one
5 aside then.

6 And I'd like to ask William then
7 to send you our document, Tab F, which I'd
8 like to mark as Exhibit 14 to the
9 deposition.

10 (Sproull Exhibit 14, 3/4/20
11 e-mail with attachments, Bates
12 FCC-00016752 to FCC-00016804, remotely
13 introduced and provided electronically
14 to the reporter.)

15 Q. And that's a document produced --

16 THE WITNESS: Can we take a brief
17 break? My computer is about to
18 restart automatically.

19 MR. PETKOSKI: Let's go off the
20 record.

21 THE VIDEOGRAPHER: The time is
22 3:08 p.m. We are now going off the
23 record.

24 (Recess taken from 3:08 to 3:15
25 p.m.)

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you choose to.

A. Okay. Okay.

Q. Is this an e-mail and attachments
you sent to Luis Fernandez on March 4,
2020?

A. Yes.

Q. Did you send this e-mail and its
attachments in the ordinary course of your
work at ASR?

A. Yes.

Q. And you're forwarding to
Mr. Fernandez an e-mail from Mr. Henderson;
is that correct?

A. Yes.

Q. Mr. Fernandez was your boss at
this time and still is, correct?

A. That's correct.

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

201

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[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

202

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[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

203

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[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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204

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Q. Okay. You can put that one aside
for now.

I'm going to ask William to send

206

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Mr. O'Malley, is that correct?

A. Yes.

Q. And if you turn to the next page with Bates number ending in 821, the e-mail continues on to that page, right?

A. Yes, I see it.

Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

207

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[REDACTED]

[REDACTED]

[REDACTED]

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208

R. SPROULL - CONFIDENTIAL

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[REDACTED]

210

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[REDACTED]

211

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Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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212

R. SPROULL - CONFIDENTIAL

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[REDACTED]

213

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[REDACTED]

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214

R. SPROULL - CONFIDENTIAL

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[REDACTED]

216

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[REDACTED]

Q. You said a few minutes ago that you send typically 12 people to the Sweetener Colloquium that's discussed in this e-mail chain.

A. Right.

Q. Is that right?

A. The number is not exact, but yeah.

Q. When those ASR employees are at the Sweetener Colloquium, would they speak